

BOOK

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STATE OF NORTH CAROLINA

RECORDED AND VERIFIED  
REBECCA P. TUCKER  
REGISTER OF DEEDS  
NEW HANOVER CO. NC

JUN 11 4 43 PM '84

DECLARATION OF  
SNUG HARBOUR CONDOMINIUMS

COUNTY OF NEW HANOVER

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SNUG HARBOUR ASSOCIATES, a North Carolina Partnership with its principal place of business in the County of New Hanover, State of North Carolina (herein "Developer") does hereby make, declare and establish this Declaration of Condominium as and for the plan of dwelling ownership of SNUG HARBOUR CONDOMINIUMS, being the property and improvements hereinafter described.

1. ESTABLISHMENT OF CONDOMINIUM. Developer proposes to create nine condominium units, each of which, if developed, will be located within (but not necessarily encompassing all) the real property described in Exhibit "A" attached hereto and incorporated herein by reference. All of these condominiums are being developed under a Common Plan which includes this Declaration, the features of which include common recreating facilities and the providing of maintenance and other services through a common administration. Each parcel or tract of land, with the improvements thereon or to be placed thereon, which may be submitted to the condominium form of ownership pursuant to this Common Plan, shall be designated as "Snug Harbour Condominiums". In addition, in order to facilitate the operation and administration of the condominium under the Common Plan, there shall be formed the non-profit corporation known as SNUG HARBOUR HOMEOWNERS ASSOCIATION, INC., which shall have the general authority and responsibility for the operation and administration of the condominium. The authority and responsibility of SNUG HARBOUR HOMEOWNERS ASSOCIATION, INC. shall be as described in this Declaration, and its Articles of Incorporation and By-Laws.

Developer does hereby submit the property, more particularly described on Exhibit "B" attached hereto and incorporated herein by reference, and the improvements located thereon to condominium ownership under the provisions of Chapter 47A of the General Statutes of North Carolina (Unit Ownership Act), and hereby declares the same to be a condominium to be known and identified as SNUG HARBOUR CONDOMINIUMS, which shall contain nine (9) living units and their supporting facilities and other appurtenant improvements. The buildings are constructed of wood framing and wood siding upon concrete foundations. Ground floors and patios are wooden. The roof contains fiberglass shingles, and there are no basements. The property contains sufficient parking space to accommodate at least one automobile for each Condominium Unit. Each Unit Owner has the right to the use, for at least one automobile, of such space. If additional phases are built, amendments to this Declaration shall be made to bring said phases under this Declaration and into the SNUG HARBOUR HOMEOWNERS ASSOCIATION, INC.

2. SURVEY AND DESCRIPTION OF IMPROVEMENTS: Filed simultaneously herewith and expressly made a part hereof as Exhibit "B", consisting of One (1) pages, which is a Survey of the land and graphic descriptions and plans of the improvements constituting the Condominium, identifying the Condominium Units and Common Areas and Facilities, as said terms are hereinafter defined, and their respective locations and approximate dimensions. Each Condominium Unit is identified by specific numerical designation on said Exhibit "B", and no Condominium Unit bears the same designation as any other Condominium Unit.

3. DEFINITIONS: The Condominium consists of Condominium Units and Common Areas and Facilities, as said terms are hereinafter defined.

A. Condominium Units as defined herein shall comprise the separate numerically identified Dwelling Units which are designated in said Exhibit "B" (and any subsequent additions), excluding all spaces and improvements lying:

(1) Beneath the subflooring material of all floors;

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(2) Beneath the interior surfacing material of all perimeter walls, interior bearing walls and/or bearing partitions;

(3) Above the interior surfacing material of the ceilings;

and further excluding all pipes, ducts, wires, conduits and other facilities for the furnishing of utilities and other services to Condominium Units and Common Areas and Facilities up to and including the point of entry of such pipes, ducts, wires, and conduits through the interior surfacing material for walls and ceilings and subflooring surfacing material for floors. All pipes, ducts, wires, conduits and other such facilities within the interior surfacing materials shall be a part of the respective Condominium Unit. The decoration and painting of the exterior surface of doors and window frames shall be the responsibility of the Association, as hereinafter defined.

B. Common Areas and Facilities (herein "Common Property") shall comprise all of the real property, improvements and facilities of the Condominium other than the Condominium Units and all personal property held and maintained for the use and enjoyment of all the Owners of Condominium Units.

C. Certain portions of the Common Areas and Facilities are reserved for the use of a particular Condominium Unit to the exclusion of other Units and are designated as "Limited Common Areas and Facilities." Limited Common Areas and Facilities and the Condominium Units to which they are reserved are as follows:

Patio and storage shed adjoining each unit as shown on plans and surveys of dwelling units.

Boat slips, which will be made available upon a "first come, first served" basis.

The terms "Association of Unit Owners", "Building", "Common Areas and Facilities", "Common Expenses", "Common Profit", "Condominium", "Declaration", "Majority" or "Majority of Unit Owners", "Person", "Property", "Recordation", "Unit" or "Condominium Unit", "Unit Designation", and "Unit Owner", unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall have the meaning set out in Section 3 of Chapter 47A of the General Statutes of North Carolina. The terms "75% of the members" or "75% of the membership", (or "3/4" in lieu of "75%") when used in the context of membership voting rights, shall mean the owners of at least 75% of the aggregate interest in the Common Areas and Facilities.

4. OWNERSHIP OF CONDOMINIUM UNITS AND APPURTENANT INTEREST IN COMMON PROPERTY: Each Condominium Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each Unit shall also own, as an appurtenance to the ownership of each said Condominium Unit, an undivided interest in the Common Property. The undivided interest appurtenant to each Condominium Unit shall be as set out in Exhibit "C" attached hereto and made a part hereof. The proportional interest in the Common Property that is appurtenant to each Condominium Unit has been determined by a ratio formulated upon the approximate relation that the fair market value of each Unit at the date of the Declaration bears to the then aggregate fair market value of all of the Units having an interest in the Common Property. The fair market value of each Unit and the aggregate fair market value of all the Units have been determined by the Developer, and are binding upon all Unit Owners.

5. RESTRICTION AGAINST FURTHER SUBDIVISION OF CONDOMINIUM UNITS: SEPARATE CONVEYANCE OF APPURTENANT COMMON PROPERTY PROHIBITED:

No Condominium Unit may be divided or subdivided into a smaller Unit or Units than as shown in Exhibit "B" nor shall any Condominium Unit or portion thereof be added to or incorporated into any other Condominium Unit. The undivided interest in the Common Property declared to be appurtenant to each Condominium Unit shall be deemed

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 conveyed, devised, encumbered or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Condominium Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon a Condominium Unit, shall be null and void insofar as it purports to affect any interest in a Condominium Unit and its appurtenant undivided interest in Common Property, unless it purports to convey, devise, or encumber the entire Condominium Unit. Any instrument conveying, devising, or encumbering any Condominium Unit, which describes said Condominium Unit by the numerical designation assigned thereto in Exhibit "B" shall be construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Property. No limitation is placed on the ownership of the Condominium Unit by any person as tenants in common, joint tenants, or as tenants by the entirety.

6. THE CONDOMINIUM SUBJECT TO RESTRICTION: The Condominium Units, Common Property and Limited Common Areas are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use of said Condominium Units, Common Property and Limited Common Areas and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its appurtenant undivided interest in the Common Property, and said Condominium Units, Common Property and Limited Common Areas are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the land and improvements of the Condominium.

7. PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON PROPERTY: The Common Property is hereby declared to be subject to a perpetual non-exclusive easement in favor of all the Owners of Condominium Units for their use and the use of their immediate families, guests and invitees, for all property purposes, and for the furnishing of services and facilities for which they are intended, and for the enjoyment of the Owners. Notwithstanding the foregoing, the Association, hereinafter defined, shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his family, guests and invitees, may be entitled to use the Common Property, including the right to assign parking spaces, and to establish regulations concerning their use.

8. EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENT ENCROACHMENTS: In the event that any Condominium Unit shall encroach upon any Common Property, or any other Condominium Unit for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents of such Owners, then an easement appurtenant to such Condominium unit shall exist for the continuance of such encroachment upon the Common Property or upon a Condominium Unit for as long as such encroachment shall naturally exist; and, in the event that any portion of the Common Property shall encroach upon any Condominium Unit, then an easement shall exist for the continuance of such encroachment of the Common Property upon any Condominium Unit for so long as such encroachment shall naturally exist. If any Condominium unit or Common Property shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and if upon reconstruction of such Unit and/or Common Property in accordance with Article 21 hereof, there exist encroachments of portions of the Common Property upon any Condominium Unit, or of any Condominium Unit upon any other Condominium Unit or upon any portion of the Common Property, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

9. RESTRAINT UPON SEPARATION AND PARTITION OF COMMON PROPERTY: Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent upon the use and enjoyment of the Common Property in common with the Owners of all other Condominium Units, and that it is in the interest of all Owners that the ownership of the Common Property be retained in common by the Owners, it is hereby declared

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that the proportional undivided interest in the Common Property appurtenant to each Condominium Unit shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division.

10. ADMINISTRATION OF THE CONDOMINIUM BY SNUG HARBOUR HOMEOWNERS ASSOCIATION, INC.: To efficiently and effectively provide for the administration of the Condominium by the Owners of the Condominium Units, a non-profit North Carolina Corporation known and designated as SNUG HARBOUR HOMEOWNERS ASSOCIATION, INC. (herein "Association") has been organized, and said corporation shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and By-Laws. A true copy of said By-Laws and Articles of Incorporation are annexed hereto and expressly made a part hereof as Exhibits "D" and "E", respectively. The Owner or Owners of each Condominium Unit shall automatically become members of the Association upon acquiring an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Property, such membership shall terminate automatically upon the Owner or Owners being divested of such ownership interest in the title to such Condominium Unit, regardless of how much ownership may be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance upon any Condominium Unit shall be entitled, by virtue of such lien, mortgage or other encumbrance, to membership in the Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, the Association is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the Condominium Units and Common Property as its Board of Directors may deem to be in its best interest.

11. RESIDENTIAL USE RESTRICTIONS APPLICABLE TO CONDOMINIUM UNITS: Each Condominium Unit is hereby restricted to residential use by its Owner, his immediate family, guests, invitees and lessees. With the exception of a lender in possession of a Condominium Unit following a default in a first deed of trust, a foreclosure proceeding or any deed in lieu of foreclosure, no Unit Owner shall lease his Unit for transient, hotel or commercial purposes. No Unit Owner may lease less than the entire Unit. Any lease agreement must provide that it shall be subject to the provisions of this Declaration, and that any failure by the lessee to comply with the terms hereof shall be a default under the lease, and shall be in writing. There is no other restriction on the right of any Unit Owner to lease his Unit.

12. USE OF COMMON PROPERTY SUBJECT TO RULES OF ASSOCIATION: The use of all Common Property by the Owner or Owners of all Condominium Units, and all other parties authorized to use the same, shall be subject to such rules and regulations as may be prescribed and established by the Association.

13. THE CONDOMINIUM TO BE USED FOR LAWFUL PURPOSES: RESTRICTION AGAINST NUISANCES: No immoral, improper, offensive or unlawful use shall be made of any Condominium Unit or of the Common Property, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Owner of any Condominium Unit shall permit anything to be done or kept in his Condominium Unit, or on the Common Property, which will increase the rate of insurance on the Condominium, or which will interfere with the rights of other occupants of the Condominium or annoy them by unreasonable noises, nor shall any Owner undertake any use which shall constitute a nuisance to any other Owner of a Condominium Unit, or which interferes with the peaceful possession and proper use of any other Condominium Unit or the Common Property.

14. RIGHT OF ENTRY INTO CONDOMINIUM UNITS IN EMERGENCIES AND FOR MAINTENANCE OF COMMON PROPERTY: In case of any emergency originating in or threatening any Condominium Unit, regardless of

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whether the owner is present at the time of such emergency, the Board of Directors of the Association, or any other person authorized by either, shall have the right to enter such Condominium Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

Whenever it may be necessary to enter any Condominium Unit in order to perform any maintenance, alteration or repair to any portion of the Common Property, the Owner of each Condominium Unit shall permit other Owners or their representatives, or an agent of the Association, to enter such Condominium Unit for such purpose, provided that the entry shall be made only at reasonable times and with reasonable advance notice.

15. LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY CONDOMINIUM UNITS: NO RIGHT TO ALTER COMMON PROPERTY: No Owner of a Condominium Unit shall permit any structural modification or alteration to be made to such Condominium Unit without first obtaining the written consent of the Association, which consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine that such structural modifications or alterations would adversely affect or in any manner endanger the Condominium in part or in its entirety. No Owner shall cause any improvements or changes to be made on the exterior of the Condominium (including painting or other decoration, or the installation of electrical wiring, television or radio antennae or any other objects or machines which may protrude through the walls or roof of the Condominium) or in any manner alter the appearance of the exterior portion of any building without the written consent of the Association being first obtained. No Unit Owner shall cause any object to be fixed to the Common Property or to any Limited Common Property (including the location or construction of fences and the planting or growing of flowers, trees, shrubs or any other vegetation) or in any manner change the appearance of the Common Property or Limited Common Property without the written consent of the Association being first obtained.

16. RIGHT OF ASSOCIATION TO ALTER AND IMPROVE COMMON PROPERTY AND ASSESSMENT THEREFOR: The Association shall have the right to make such alterations or improvements to the Common Property which do not prejudice the rights of the Owner of any Condominium Unit in the use and enjoyment of his Condominium Unit, provided the making of such alterations and improvements are approved by the Board of Directors of the Association, and their costs shall be common expenses to be assessed and any alterations and improvements are exclusively or substantially for the benefit of the Owner or Owners of certain Condominium Unit or Units requesting them, then the cost of such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Condominium Unit or Units exclusively or substantially benefited, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.

17. MAINTENANCE AND REPAIR BY OWNERS OF CONDOMINIUM UNITS: Every Owner shall perform promptly all maintenance and repair work within his Condominium Unit which, if omitted, would affect the Condominium, either in its entirety or in a part belonging to other Owners, every Owner being expressly responsible for the damages and liability which his failure to do so may engender. The Owner of each Condominium Unit shall be liable and responsible for the maintenance, repair and replacement of all heating and airconditioning equipment, regardless of where located, stoves, refrigerators, fans, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to his Condominium Unit. Such owner shall further be responsible and liable for the maintenance, repair and replacement of the interior surfaces of all walls, ceilings and floors within his Unit, including painting, decorating and furnishings, and all other accessories which such Owner may desire to place or maintain in his Condominium Unit. Whenever the maintenance, repair and replacement of any item for which the Owner is obligated to maintain, replace or repair at his own expense if occasioned by any loss or

damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement except that the Owner of such Condominium Unit shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. The Owner of a Condominium Unit who has exclusive use of any Limited Common Area shall maintain such at his own expense. All doors, window frames, panes and screens are a part of the respective Condominium Units and shall be maintained by the respective Unit Owners.

**18. MAINTENANCE AND REPAIR OF COMMON PROPERTY BY THE ASSOCIATION:** The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Property, including those portions thereof which contribute to the support of the buildings, and all conduits, ducts, plumbing, wiring and other facilities located in the Common Property for the furnishing of utility, heating and other services to the Condominium Units and said Common Property, and should any incidental damage be caused to any Condominium Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Property, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair and replacement of any item for which the Association are obligated to maintain, replace or repair at its expense is occasioned by an act of a Condominium Unit Owner, his immediate family, guests, or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or by his family, guests or invitees) shall be required to pay such portion of the cost of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

**19. AUTHORITY TO PURCHASE INSURANCE:** Insurance policies upon the Property (except title insurance) shall be purchased by the Association in the name of the Board of Directors of the Association, as Trustees for the Condominium Unit Owners, for the benefit of the Condominium Unit Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the Condominium Units or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Condominium Unit Owners, the Association and their respective servants, agents and guests. Each Condominium Unit Owner may obtain insurance, at his own expense, affording coverage upon his Condominium Unit, his personal property and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation referred to above if available.

**20. INSURANCE COVERAGE TO BE MAINTAINED: USE AND DISTRIBUTION OF INSURANCE PROCEEDS:**

A. The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Condominium Units and Common Property:

(1) Casualty insurance covering the buildings and all improvements upon the land and all personal property subject to this Declaration and any additions added by amendment, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation, foundations, streets and parking facilities) as determined annually by the insurance company affording such coverage; and provided that such policies may be written on a

co-insurance basis of not less than eighty percent (80%). If co-insurance is purchased by the Association, an insurance policy with an agreed amount endorsement or its equivalent will be obtained. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including but not limited to vandalism and malicious mischief.

(2) Public liability and property damage insurance in such amounts and in such forms as shall be required by the Association, including legal liability, hired automobile, non-owned automobile and off-premises employee coverages.

(3) All liability insurance shall contain cross-liability endorsements to cover liabilities of the Condominium Unit Owners as a group to a Condominium Unit Owner.

(4) Fidelity Coverage protecting against dishonest acts by Association officers, directors, trustees, and employees and all others who are responsible for handling funds of the Association in the amount of one year's operating budget, plus projected reserve balances during the budget year. If professional management is obtained by the Association and it has this coverage and it handles the funds, then this requirement will be satisfied.

B. Premiums upon insurance policies purchased by the Association shall be paid by said Association and charged as Common Expense.

C. All insurance policies purchased by the Association shall be for the benefit of the Association and the Condominium Unit Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association. The Association shall hold such proceeds in trust for the benefit of the Association, the Condominium Unit Owners and their respective mortgagees in the following shares:

(1) Proceeds on account of damage to Common Property: in undivided shares for each Condominium Unit Owner and his mortgagee, if any, which is set forth as the Condominium Unit Owner's share as then exists under paragraph 4 above.

(2) Proceeds on account of damages to Condominium Units shall be held in the following undivided shares:

(a) Partial destruction when the Condominium is to be restored: for the Owners of damaged Condominium Units in proportion to the costs of repairing the damage suffered by each damaged Condominium Unit;

(b) Total destruction of the Condominium or where the Condominium is not to be restored; for all Condominium Unit Owners and their mortgagees, the share of each being set forth in paragraph 4 above.

D. In the event a mortgagee endorsement has been issued as to a Condominium Unit, the share of the Condominium Unit Owner shall be held for the mortgagee and the Condominium Unit Owner as their interests may appear, but nothing herein contained shall be construed so as to give any mortgagee the right to determine or participate in the determination of reconstruction or repair.

E. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial Condominium Unit Owners in the following manner:

(1) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial

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Condominium Unit Owners, all remittances to Condominium Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Condominium Unit and may be enforced by him.

(2) If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Condominium Unit Owners, remittances to Condominium Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Condominium Unit and may be enforced by him.

F. Each Unit Owner, at his expense, shall keep in force comprehensive personal liability insurance covering liability for damages to person or property of others located within such Owner's Unit, or another Unit, or upon the Common Area and facilities in such amounts as the Board of Directors shall, from time to time, determine, but in no case less than \$100,000 for each occurrence.

21. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE; DAMAGE TO COMMON PROPERTY; DAMAGE TO CONDOMINIUM UNITS.

A. If any part of the Common Property shall be damaged by casualty, the determination of whether or not to reconstruct or repair it shall be made as follows:

(1) Partial destruction shall be destruction of two-thirds (2/3) or less of the building. In the event of partial destruction, the Common Property shall be reconstructed or repaired unless this Declaration is terminated by the unanimous vote of all of the Condominium Unit Owners at a meeting of the members of the Association called and held prior to commencement of such reconstruction or repair.

(2) Total destruction shall be destruction of more than two-thirds (2/3) of the building. In the event of total destruction, the Common Property shall not be reconstructed or repaired if, at a meeting which shall be called within thirty (30) days after the occurrence of the casualty, or if by such date the insurance loss has not been finally adjusted, then within thirty (30) days after each adjustment, Condominium Unit Owners who own three-fourths (3/4) or more of the building vote against reconstruction or repair.

(3) Any such reconstruction or repair shall be substantially in accordance with the plans and specifications contained herein.

B. If the damage is only to those parts of one or more Condominium Units for which the responsibility for maintenance and repair is that of the Unit Owner, then the Condominium Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association as follows:

(1) Immediately after the casualty causing damage to property for which the Association have the responsibility for maintenance and repair, the Association shall obtain reliable and detailed estimates of the costs to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors deem appropriate.

(2) When the damage is to both Common Property and Condominium Units, the insurance proceeds shall be applied first to the costs of repairing the Common Property and the balance to the Condominium Units.

C. Each Condominium Unit Owner delegates to the Board of Directors of the Association his right to adjust with insurance companies all losses under policies purchased by the Association, except in any case where the damage is restricted to one Condominium Unit.

**22. ASSOCIATION TO MAINTAIN REGISTER OF OWNERS AND MORTGAGEES.** The Association shall maintain a Register setting forth the names of the Owners of all of the Condominium Units. In the event of the transfer of any Condominium Unit to a third party, the transferee shall notify the Association in writing of his interest in such Condominium Unit, together with the recording information necessary to identify the instrument by which the transferee has acquired his interest. The Owner of each Condominium Unit shall also notify the Association of the parties holding any mortgage on any Condominium Unit, the amount of such mortgage and the recording information necessary to identify the mortgage. The holder of any mortgage upon any Condominium Unit may notify the Association of the existence of any mortgage and the Association shall register in its records all pertinent information relating thereto.

**23. ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT:** The Association is given the authority to administer the operation and management of the Condominium as being in the best interest of the Owners of all Condominium Units. To properly administer the operation and management of the Condominium, the Association will incur for the mutual benefit of all of the Owners of Condominium units, costs and expenses (herein "common expense"). To provide the funds necessary for such property operation, management and capital improvement, the Association has been granted the right to make, levy and collect assessments against the Unit Owners and their Condominium Units. In furtherance thereof, the following provisions shall be operative and binding upon the Owners of all Condominium Units:

A. All assessments levied against the unit Owners and their Condominium Units shall be uniform and, unless specifically otherwise provided for herein, all assessments made by the Association shall be in such an amount that any assessment levied against a Unit Owner and his Condominium Unit shall bear the same ratio to the total assessment made against all Unit Owners and their Condominium Units as the undivided interest in Common Property appurtenant to each Condominium Unit bears to the total undivided interest in Common Property appurtenant to all Condominium Units. Should the Association be the Owner of a Condominium Unit or Units, the assessment which would otherwise be due and payable to the Association by the Owner of such Unit or Units, reduced by the amount of income which may be derived from the leasing of such Unit or Units by the Association, shall be apportioned and assessment therefor levied ratably among the Owners of all Units which are not owned by the Association, based upon their proportionate interests in Common Property exclusive of the interests therein appurtenant to any Unit or Units owned by the Association.

B. Assessments provided for herein shall be payable in monthly installments, or in such other manner as the Board of Directors of the Association shall determine. Such assessments shall commence for each Unit when selected by the Board of Directors of the Association.

C. The Board of Directors of the Association shall establish an Annual Budget in advance for each fiscal year (which shall correspond to the calendar year, except that in the initial year of operation of the Condominium, the fiscal year shall commence with the closing of the sale of the first Condominium Unit). Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with paragraph "D" hereof, items relating to operation and maintenance from items relating to capital improvements. Upon adoption of such Annual Budget by the Board of Directors of the Association, copies shall be delivered to each Owner of a Condominium Unit and the assessment for said year shall be established based upon such budget, although the non-delivery of a copy of it to each Owner shall not affect the liability of any Owner for such assessment. A Majority of the Owners must approve an increase in the yearly assessment paid

monthly if this increase exceeds the previous year's assessment by an amount greater than the percentage increase in the Consumer Price Index compiled by the Bureau of Labor Statistics of the United States Department of Labor from January 1 of the prior year to January 1 of the current year.

D. The Board of Directors of the Association, in establishing the Annual Budget for operation, management and maintenance of the Condominium, shall designate a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Property (herein "Capital Improvement Fund") which shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Property, and the replacement of personal property constituting a portion of the Common Property held for the joint use and benefit of the Owners of Condominium Units. The amount to be allocated to the Capital Improvement Fund may be established by the Board of Directors to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Property. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and shall be used only to make capital improvements to Common Property. Any interest earned on the Capital Improvement Fund may be expended for current operation and maintenance.

E. All funds collected by the Association shall be treated as the separate property of the Association, and such funds may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by this Declaration, the Articles of Incorporation and the By-Laws of the Association. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Property, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Condominium Unit. When the Owner of a Condominium Unit shall cease to be a member of the Association, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all funds which any Owner has paid to the Association shall constitute an asset of the Association which may be used in the operation and management of the Condominium.

F. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of its due date. When in default, the delinquent assessment or delinquent installment thereof due to Association shall bear interest at ten (10%) percent per annum until paid in full to the Association.

G. The Owner or Owners of each Condominium Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Condominium Unit while such party or parties are Owner or Owners of a Condominium Unit. In the event that any Unit Owner or Owners are in default in payment of any assessment or installment owed to the Association, such Unit Owner or Owners shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment and interest thereon, including reasonable attorney's fees, whether suit be brought or not.

H. No Owner of a Condominium Unit may exempt himself from liability for any assessment levied against him or his Condominium Unit by waiver of the use of enjoyment of any of the Common Property, or by abandonment of the Condominium Unit or in any other way.

I. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefor, and that such proper operation and maintenance results in

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benefit to all of the Owners of Condominium Units, and that the payment of such common expenses represented by the assessments levied and collected by Association is necessary in order to preserve and protect the investment of each Unit Owner, the Association is hereby granted a lien upon each Condominium Unit and its appurtenant undivided interest in Common Property, which lien shall secure the funds due for all assessments now or hereafter levied against the Owner of each Condominium Unit, which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Condominium Unit. The lien granted to the Association may be foreclosed in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, and in any suit for the foreclosure of said lien, the Association shall be entitled to reasonable rental from the Owner of any Condominium Unit from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a Receiver for said Condominium Unit. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, including interest at ten (10%) percent on any such advances so made. All persons, who shall acquire any interest in the ownership of any Condominium Unit, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Condominium Unit expressly subject to such lien rights.

J. The lien herein granted to the Association shall be enforceable from the time of recording a claim of lien in the Public Records of New Hanover County, North Carolina, which claim shall state the description of the Condominium Unit encumbered thereby, the name of the record owner, the amount due and date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon. It shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, it shall be satisfied of record.

The lien provided for herein shall be subordinated to the lien of any mortgage or deed of trust. Any person, firm or corporation acquiring title to any Condominium Unit and its appurtenant undivided interest in Common Property by any foreclosure, deed in lieu of foreclosure, or judicial sale, shall be liable and obligated only for assessments as shall accrue and become due and payable for said Condominium Unit and its appurtenant undivided interest in Common Property subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a Condominium Unit by foreclosure, deed in lieu of foreclosure, or judicial sale, any assessment which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners of all Condominium Units as a part of the common expense, although nothing herein contained shall release the party liable for such delinquent assessment from the payment thereof of the enforcement of collection of such payment by means other than foreclosure.

K. Whenever any Condominium Unit may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Unit Owners, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by such Unit. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement.

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In the event that a Condominium Unit is to be leased, sold or mortgaged at the time when payment of any assessment against the Owner of said Condominium Unit and such Condominium Unit due to the Association shall be in default (whether or not a claim of lien has been recorded by the Association), then the rent, proceeds of such purchase or mortgage proceeds, shall be applied by the lessee, purchaser or mortgagee first to the payment of any then delinquent assessment or installments thereof due to the Association before the payment of any rent, proceeds of purchase or mortgage proceeds to the Owner of any Condominium Unit who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Condominium Unit, the purchaser thereof shall be jointly and severally liable with seller for all unpaid assessments against seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the purchaser to recover from seller the amounts paid by purchaser therefor.

Institution of a lawsuit to attempt to collect the payment of any delinquent assessment shall not be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to Association.

24. COMMON SURPLUS: "Common Surplus", meaning all funds and other assets of the Association (including excess of receipts of the Association, including but not limited to assessments, rents, profits and revenues from whatever source over amount of the common expense), shall be owned by the Owners of all Condominium Units in the same proportion that the undivided interest in Common Property appurtenant to each Owner's Condominium Unit bears to the total of all undivided interest in Common Property appurtenant to all Condominium Units; provided, however, that said common surplus shall be held by the Association in the manner, and subject to the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance indemnity herein provided, or upon termination of the Condominium, any attribution or distribution of common surplus which may be made from time to time shall be made to the then Owners of Condominium Units in accordance with their percentage interest in common surplus as declared herein.

25. TERMINATION: The Condominium shall be terminated, if at all, in the following manner:

A. The termination of the Condominium may be effected only by the unanimous agreement of all Condominium Unit Owners expressed in an instrument duly recorded; and, provided that the holders of all liens affecting any of the Condominium Units consent thereto, or agree, by instrument duly recorded, that their liens be transferred to the percentage of the undivided interest of the Condominium Unit Owner in the Property as provided in subparagraph "C" below. The termination shall become effective when such agreement has been recorded in the public records of New Hanover County, North Carolina.

B. If it is determined in the manner elsewhere provided that the Condominium shall not be reconstructed after casualty, the Condominium plan of ownership shall be terminated and the Declaration of Condominium revoked. The determination not to reconstruct after casualty shall be evidenced by a Certificate of the Association certifying as to the facts effecting the termination, which Certificate shall become effective upon being recorded in the public records of New Hanover County, North Carolina.

C. After termination of the Condominium, the Condominium Unit Owners shall own the Property as tenants in common in undivided shares and the holders of mortgages and liens against the Condominium Unit or Units formerly owned by such Condominium Unit Owners shall have mortgages and liens upon the respective undivided shares of the Condominium Unit Owners. The undivided share or interest owned as

tenants in common shall be that percentage of the undivided interest in the Common Area and Facilities previously owned by each Unit Owner. All funds held by the Association and insurance proceeds, if any, shall be held for the Unit Owners in the same proportion. The costs incurred by the Association in connection with the termination shall be a Common Expense.

D. Following termination, the property may be partitioned and sold upon the application of any Condominium Unit Owner. Following a termination, if the Board of Directors determines by not less than a three-fourths (3/4) vote to accept an offer for the sale of the property, each Condominium Unit Owner shall be bound to execute such deeds and other documents reasonably required to effect such sale at such times and in such form as the Board of Directors directs. In such event, any action for partition or other division of the property shall be held in abeyance pending such sale, and upon the consummation thereof shall be discontinued by all parties thereto.

E. The members of the Board of Directors acting collectively as agent for all Condominium Unit Owners, shall continue to have such powers as granted herein, even though the Association may be dissolved upon a termination.

26. AMENDMENT OF DECLARATION OF CONDOMINIUM: This Declaration of Condominium may be amended in the following manner:

A. Developer shall have the right to amend this Declaration at any time prior to May 1, 1985, without the further consent of the Unit Owners and Institutional Lenders, to incorporate into the Property all the land described in Exhibit "A" attached hereto and incorporated herein by reference. No amendment made by Developer in accordance with this paragraph shall divest an Owner of any portion of his Dwelling Unit without the consent of such Owner and no such amendment shall materially alter the plan of development set forth herein without the consent of all Owners affected thereby. Each Unit Owner and each Institutional Lender shall further be deemed by the Owner's acceptance of a deed to a Condominium Unit to have appointed Developer their attorney-in-fact to give, execute and record the consent of said Owner and said Institutional Lender to any and all amendments to this Declaration which Developer may wish to execute pursuant to the powers herein reserved.

B. Except for amendment pursuant to subparagraph A, an amendment to this Declaration of Condominium may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Condominium Units, whether meeting as members or by instrument in writing signed by them. Upon any Amendment to this Declaration being proposed by the Board of Directors or members, such proposed Amendment shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Meeting of the members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by him of the proposed Amendment. It shall be the duty of the Secretary to give to each member written notice of such Special Meeting, stating the time and place, and reciting the proposed Amendment in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than thirty (30) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his Post Office address as it appears on the records of the Association, the postage thereon prepaid. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the Amendment proposed must be approved by an affirmative vote of seventy-five (75%) percent of the members owning Units in the Condominium in order for such Amendment to become effective. Thereupon such Amendment of this Declaration shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or an executed copy of such Amendment so certified and executed with the same formalities as a deed, shall

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be recorded in the New Hanover County Public Registry within ten (10) days from the date on which the same became effective. At any meeting held to consider such Amendment, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to such meeting or at such meeting.

C. No alteration in the percentage of ownership in Common Property appurtenant to each Condominium Unit, or alteration of the basis for sharing common expenses and other apportionment of assessments which may be levied by the Association in accordance with the provisions hereof, or alteration of basis of ownership of Common Surplus, or alteration of voting rights in the Association, shall be made without the prior written consent of all of the Owners of all Condominium Units and all of the Lenders holding first mortgages or first deeds of trust on the Condominium Units, subject to the provisions for adding additional phases pursuant to subparagraph A above.

D. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of Lender shall be made without prior written consent of all Lenders holding mortgages on Condominium Units in the Condominium being first had and obtained.

E. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of Developer shall be made without the written consent of said party being first had and obtained.

27. REMEDIES IN EVENT OF DEFAULT: The Owner or Owners of each Condominium Unit shall be governed by and shall comply with the provisions of this Declaration and the Articles of Incorporation and By-Laws of the Association, as they may be amended from time to time. A default by the Owner of any Condominium Unit shall entitle the Association or the Owners of other Condominium Units to the following relief:

A. Failure to comply with any of the terms of this Declaration or other restrictions and regulations contained in the Articles of Incorporation, or By-Laws of the Association, or which may be adopted pursuant thereto, shall be grounds for relief including without limitation an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof. Such relief may be sought by the Association or, if appropriate, by an aggrieved Unit Owner.

B. Each Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Condominium Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

C. In any proceeding arising because of an alleged default by a Unit Owner, the Association shall be entitled to recover the costs of the proceeding and reasonable attorney's fees.

D. The failure of the Association or any Unit Owner to enforce any right, provision, covenant or condition which may be granted by this declaration or the other abovementioned documents shall not constitute a waiver of the right of the Association or of the Unit Owner to enforce such right, provision, covenant or condition in the future.

E. All rights, remedies and privileges granted to the Association or the Owner or Owners of a Condominium Unit pursuant to any terms, provisions, covenants or conditions of this Declaration or

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other abovementioned documents, shall be cumulative, and the exercise of any one or more shall not constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

F. The failure of Developer to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or other abovementioned documents shall not constitute a waiver of the right of Developer to thereafter enforce such right, provision, covenant or condition in the future.

G. The failure of a Lender to enforce any right, provision, privilege, covenant or condition which may be granted to it or them by this Declaration or other abovementioned documents, shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

28. RIGHTS RESERVED UNTO LENDERS: As long as any Lender shall hold any mortgage upon any Condominium Unit or Units, or shall be the Owner of any Condominium Unit or Units, such Lender shall have the following rights:

A. To approve the company or companies with whom casualty insurance is placed.

B. To examine, upon request and at reasonable times and upon reasonable notice, the books and records of the Association; and to be furnished at least one copy of the Annual Audited Financial Statement and Report of the Association prepared by a Certified Public Accountant designated by the Association, such Financial Statement and Report to be furnished by April 1 of each calendar year.

C. To be given written notice by the Association of the call of any meeting of the membership, which notice shall state the purpose of such meeting; and to designate a representative to attend.

D. To be given written notice of default by any Owner owning a Condominium Unit encumbered by a mortgage held by the Lender, such notice to be sent to the place which it may designate in writing.

E. To be given written notice of any loss to or taking of, the common elements of the Condominium if such loss or taking exceeds \$10,000 or damage to a Condominium Unit in excess of \$1,000.

F. To receive written notice of any condemnation or eminent domain proceeding or proposed acquisition by a condemning authority.

Whenever any Lender desires the provisions of this Article to be applicable to it, it shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, identifying the Condominium Unit or Units upon which any such Lender holds any mortgage, or identifying any Condominium Units owned by it, together with sufficient facts to identify such mortgage and which notice shall designate the place to which notices are to be given by the Association to such Lender.

29. RIGHT OF DEVELOPER TO REPRESENTATION ON BOARD OF DIRECTORS OF THE ASSOCIATION: So long as Developer owns twenty-five percent (25%) of the total Condominium Units in the Condominium, but in any event, no longer than December 31, 1986, Developer shall have the right to designate and select a majority of the persons who shall serve as members of the Board of Directors of the Association.

In the event of dissolution of Developer at the time when it is the Owner of a Condominium Unit, then the rights of the developer shall pass to and may be exercised by its successors receiving ownership of any such Condominium Unit in dissolution.